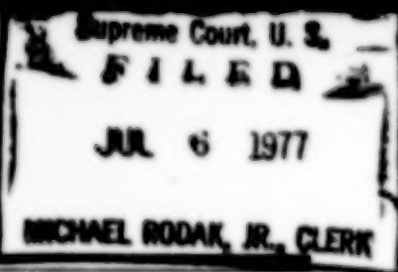


APPENDIX.



IN THE
Supreme Court of the United States

OCTOBER TERM, 1976.

No. 76-1149

JOHN D. CAREY, ET AL.,

Petitioners,

VS.

JARIUS PIPHUS, A MINOR AND GENEVA PIPHUS, GUARDIAN
AD LITEM FOR JARIUS PIPHUS,

Respondents.

JOHN D. CAREY, ET AL.,

Petitioners,

VS.

PEOPLE UNITED TO SAVE HUMANITY, SILAS BRISCO,
A MINOR AND CATHERINE BRISCO, GUARDIAN AD LITEM
FOR SILAS BRISCO,

Respondents.

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* At Page A5 of Petition for Writ of Certiorari.

** At Page A1 of Petition for Writ of Certiorari. The opinion is also reported at 545 F. 2d 30 (7th Cir. 1976).

APPENDIX**RELEVANT DOCKET ENTRIES**

**IN JARIUS PIPHUS, ETC. vs. JOHN D. CAREY, ETC.
(74 C 303)**

- 2/ 1/74 Filed Complaint.
- 2/ 1/74 Filed motion for temporary restraining order and/or preliminary injunction.
- 2/ 1/74 Temporary restraining order granted for period of 10 days.
- 7/10/74 Filed defendants answer.
- 5/21/75 Enter order dated May 19, 1975 cause to be submitted on stipulated record.
- 6 30/75 Filed plaintiffs' motion for judgment on stipulated record.
- 9/12/75 Filed plaintiff reply memorandum in support of motion for judgment on stipulated record.
- 11/ 7/75 Enter memorandum opinion and order (Judge McLaren) dated 11-5-75.
- 11/21/75 Filed plaintiffs' joint motion to amend final order.
- 12/ 3/75 Filed plaintiffs' memorandum in support of motion to amend final order.
- 3/15/76 Enter order dated March 5, 1976 assigning cause to Honorable Judge Leighton
- 5/ 4/76 Enter order dated April 30, 1976 denying plaintiffs' joint motion to amend Judge McLaren's Memorandum Opinion and Order.
- 5/28/76 Filed plaintiff's notice of appeal.

RELEVANT DOCKET ENTRIES

IN PEOPLE UNITED TO SAVE HUMANITY, ETC. vs.
JOHN D. CAREY, ETC. (73 C 2522)

- 10/ 2/73 Filed complaint.
- 10/ 4/73 Filed motion for temporary restraining order and/or preliminary injunction.
- 11/12/73 Filed plaintiffs' second amended complaint.
- 12/21/73 Filed plaintiffs' motion for determination of a class.
- 1/ 3/74 Temporary restraining order and preliminary injunction denied.
- 2/ 4/74 Filed suggestion of death upon the record of defendant Rudolph Jezik, Jr.
- 6/18/74 Enter order dated June 13, 1974 granting motion of Bakalis of dismissal, denying motion of defendants' Board of Education of the City of Chicago to dismiss, denying motion of plaintiffs' for certification of the class, denying motion challenging standing of P. U. S. H.
- 8/ 8/74 Filed defendants' answer to second amended complaint.
- 5/21/75 Enter order dated May 19, 1975, cause to be submitted on stipulated record.
- 11/ 6/75 Enter memorandum opinion and order of Judge McLaren dated 11-5-75.
- 11/17/75 Filed plaintiffs' motion for suggestion of Silas Brisco and P. U. S. H. in support of plaintiffs motion to amend final order.
- 11/21/75 Filed plaintiffs' joint motion to amend final order.
- 12/ 3/75 Filed plaintiffs' memorandum in support of motion to amend final order.

- 3/ 9/76 Enter order dated March 5, 1976 reassigning case to Judge Leighton.
- 5/ 3/76 Enter order dated April 30, 1976 denying plaintiffs' joint motion to amend Judge McLaren's Memorandum Opinion and Order.
- 5/28/76 Filed plaintiffs' notice of appeal.

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

JARIUS PIPHUS, a minor, and GENEVA
PIPHUS, guardian ad litem for
JARIUS PIPHUS,
Plaintiffs,

vs.

JOHN D. CAREY; CAREY PRESTON;
GERALD SBARBARO; ALVIN BOUT-
TEE; MARIA CERDA; BERNARD
FRIEDMAN; LOUISE MALLIS;
THOMAS NAYDER; MARGARET
WILD; MRS. WILLIAM ROHTER;
JAMES F. REDMOND; individually
and in his official capacity as Gen-
eral Superintendent of Schools;
REGINALD V. BROWN, individually
and in his official capacity as Princi-
pal of Chicago Vocational High
School,
Defendants.

74 C 303

COMPLAINT

Count 1

1. This is a civil action for declaratory and injunctive relief and for damages for violation of the Constitution and laws of the United States. Plaintiff seeks a declaration that the actions of defendant school officials in suspending him from school without notice, without a hearing and pursuant to no published rules of procedure violates his right to procedural due process of law, guaranteed by the Fourteenth Amendment to the United States Constitution.

2. Jurisdiction is based on 28 U. S. C. §§ 1343 and 1344 and 42 U. S. C. § 1983 and arises under the Fourteenth Amendment to the United States Constitution. Declaratory relief is authorized by 28 U. S. C. §§ 2201 and 2202 and Rule 57, F. R. C. P.

3. Plaintiff Jarius Piphus is a 14-year-old male residing in the City of Chicago who is presently enrolled at Chicago Vocational High School in Chicago, Illinois. Geneva Piphus is the mother of Jarius Piphus and is serving as next friend and guardian ad litem for purpose of this action.

4. Defendants John D. Carey, Carey B. Preston, Gerald Sbarbaro, Alvin Boutte, Maria Cerda, Bernard Friedman, Louise Malis, Thomas Nayder, Margaret Wild and Mrs. William Rohter are members of the Board of Education of the City of Chicago and are charged with the responsibility of administration of the public schools within Chicago pursuant to Chapter 122, Section 34-19, Ill. Rev. Stat., and are empowered to oversee the disciplining of pupils.

5. Defendant James F. Redmond is the General Superintendent of Schools of the City of Chicago and as such is the chief administrative officer of the school board of the City of Chicago responsible for the administration of the public schools and the overseeing of the disciplinary process.

6. Reginald V. Brown is a principal of Chicago Vocational High School in the City of Chicago. Defendant Reginald Brown is responsible for the administration of discipline and the suspension of students in Chicago Vocational High School and is the individual who both accused plaintiff of certain acts of misconduct and authorized the suspension of plaintiff from school.

7. On January 23, 1974, while plaintiff was walking with a classmate from a class that was just completed to a class about to begin on the premises of Chicago Vocational High School (CVS), he was accused by the principal of CVS, defendant Reginald Brown, of smoking a cigarette containing marijuana.

Plaintiff and his classmate had been sharing a "Kool" brand cigarette.

8. Although plaintiff immediately denied having smoked any marijuana whatever and there was no evidence of his having smoked any marijuana whatever, the defendant Reginald Brown took plaintiff to the office of Mr. Kimbrough, who handles boys' discipline for CVS. There plaintiff emptied his pockets of their contents, which did not include a cigarette, marijuana or any other manner of illicit substance. His classmate took from his pocket a package of "Kool" brand cigarettes in the presence of Mr. Kimbrough.

9. Plaintiff then was told to sit outside of his office from 9:30 A.M. to 4:00 P.M. which plaintiff did with the exception of one half hour for the lunch period, which Mr. Kimbrough gave plaintiff permission to attend.

10. At 4:00 P. M. on January 23, 1974, Mr. Kimbrough told plaintiff he was suspended for twenty days. Neither plaintiff nor his mother has received any other notice, written or oral, of plaintiff's suspension or of the reasons therefore.

11. On January 28, 1974, David Young, representing plaintiff, repeatedly attempted to contact the District 16 superintendent without success. On the afternoon of January 28, 1974, Ms. Grace Dawson, Human Relations Coordinator for District 16 called Mr. Young.

12. When Mr. Young requested reinstatement of plaintiff and a hearing on the matter of his suspension, Ms. Dawson told him that plaintiff was not entitled to a hearing under the regulations of the Chicago Board of Education.

13. On Wednesday, January 30, 1974, plaintiff, plaintiff's mother and sister, John Elson and David Young of the Mandel Legal Aid Clinic, went to a conference at the school set up by Ms. Dawson. She and Mr. Reginald Brown attended.

14. When Mr. Elson said he would record the proceeding and then turned on a tape recorder to do so, Mr. Brown seized

the recorder, turned it off, and told Mr. Elson and Mr. Young to leave his office. Mr. Elson objected, but said he would not use the tape recorder (under protest). Mr. Elson asked for the proceeding to commence. However, Mr. Brown still refused to allow Mr. Elson or Mr. Young to remain in the room.

15. Defendants' actions in suspending plaintiff from school violates the United States Constitution's Fourteenth Amendment guarantee of due process of law in that they deprived him of substantial personal interests, including twenty days of high school education, a fair opportunity to pass his courses and graduate from high school, and a discipline-free high school record, without allowing him a chance to present a defense to the charges against him.

16. Defendants violated plaintiff's right to procedural due process of law by the following specific acts:

- a. punishing him without giving him or his parents written notice of the charges against him;
- b. punishing him without giving him notice of his opportunity for a hearing;
- c. punishing him without giving him a prior hearing with the following procedural rights:
 1. that of a record made of the proceedings;
 2. that of a decision by a impartial hearing officer;
 3. that of a written decision with a statement of reasons;
 4. that of meaningful and objective review of the decision of the hearing officer;
 5. and that of the opportunity to be represented by counsel;
- d. punishing him without reference to any procedural rules.

Plaintiff is now being denied by defendants fundamental civil rights and is thereby being caused irreparable injury for which there is no adequate remedy at law.

WHEREFORE, Plaintiff prays that this Court:

1. preliminarily and permanently enjoin defendants from suspending plaintiff from school unless they first provide him with the aforesaid procedural safeguards required by the Fourteenth Amendment to the United States Constitution;

2. permanently order that all records of the suspension complained of herein be expunged from his school record;

3. preliminarily and permanently order defendants to provide tutors to enable plaintiff to make up work he missed as a result of the suspension;

4. preliminarily and permanently enjoin defendants from punishing plaintiff in any way for the actions complained of herein;

5. declare Illinois Revised Statutes, ch. 122 § 34-19 and Ch. VI, § 6, Art. 9 of the Rules of the Chicago Board of Education to be unconstitutional and void on their faces and/or as applied;

6. award \$3,000 actual and punitive damages; and grant plaintiff his costs and attorney's fees; and

7. award any other relief which is necessary and just under the circumstances.

JOHN ELSON
Attorney for Plaintiff

JOHN ELSON
Mandel Legal Aid Clinic
6020 S. University Ave.
Chicago, Illinois 60637
FA 4 5181
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT

* * (Title Omitted in Printing—74-C-303) * *

ANSWER

Now come the defendants John D. Carey, Carey Preston, Gerald Sbarboro, Alvin Bouttee, Maria Cerda, Bernard Friedman, Louise Malis, Thomas Nayder, Margaret Wild, Mrs. William Rohter, James F. Redmond and Reginald V. Brown, through their Attorney, Michael J. Murray, and in answer to the Complaint state as follows:

1. Defendants admit that the alleged claim is a civil action for declaratory judgment and injunctive relief, but deny that the actions of the school officials violated plaintiff's right to procedural due process of law or any right whatsoever.

2. Defendants admit the allegations of paragraph 2.

3. Defendants admit the allegations of paragraph 3.

4. Defendants admit the allegations of paragraph 4 except defendants deny that Alvin Boutte is a member of the Board of Education of the City of Chicago.

5. Defendants admit the allegations of paragraph 5.

6. Defendants admit the allegations of paragraph 6.

7. Defendants deny that plaintiff was walking to class, and state further that plaintiff was standing outside the school exit smoking. Defendants admit that plaintiff was seen smoking a marijuana cigarette.

8. Defendants admit the allegations of paragraph 8, but deny that no evidence was present of plaintiff having smoked marijuana.

9. Defendants state that plaintiff sat in the discipline office from 9:30 A.M. to 4:00 P.M. Defendants further state that repeated attempts were made to contact the parent of plaintiff and that defendant Brown and Mr. Kimbrough, Director of

Discipline at Chicago Vocational High School received no cooperation from plaintiff Jarius Piphus in attempting to contact his parent.

10. Defendants admit that plaintiff Jarius Piphus was suspended for 20 days. Defendants deny the further allegation of paragraph 10.

11. Defendants admit that Mrs. Grace Dawson, Human Relations Coordinator for District 16 contacted Mr. Young. Defendants further state they do not have sufficient information to form a belief as to the truth of the further allegation of paragraph 11, and, therefore, deny the same.

12. Defendants deny the allegations of paragraph 12.

13. Defendants admit the allegations of paragraph 13.

14-16. Defendants deny the allegations of paragraphs 14 through 16.

WHEREFORE, defendants pray that this Court deny the plaintiffs their relief prayed for in the Complaint and ask this Court for reasonable costs and attorneys fees.

/s/ MICHAEL J. MURRAY

Michael J. Murray

Attorney

STANLEY A. STRZELECKI, JR.
Assistant Attorney
228 North LaSalle Street
Chicago, Illinois 60601
641-3900

IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

PEOPLE UNITED TO SAVE HUMANITY;
SILAS BRISCO, individually and on
behalf of all others similarly situ-
ated, CATHERINE BRISCO, guardian
ad litem, individually and on behalf
of all others similarly situated,

Plaintiffs,

vs.

JOHN D. CAREY; CAREY PRESTON;
GERALD SBARBARO; ALVIN
BOUTTEE; MARIA CERTA; BER-
NARD FRIEDMAN; LOUISE MALLIS;
THOMAS NAYDER; MARGARET WILD;
JAMES F. REDMOND, individually
and in his official capacity as Gen-
eral Superintendent of Schools;
RUDOLPH JEZIK, JR., individually
and in his official capacity as Prin-
cipal of Barton Public School;
MICHAEL J. BAKALIS, individually
and in his official capacity as Illinois
Superintendent of Public Instruc-
tion,

Defendants.

No. 73 C 2522

SECOND AMENDED COMPLAINT

Count 1

1. This is a civil action for declaratory and injunctive relief and for damages for violation of the constitution and laws of the United States. Plaintiffs, individually and on behalf of all others similarly situated, seek a declaration that the actions of

defendant school officials in suspending a male student for wearing a small earring in one ear without a proper hearing and pursuant to un-published rules and regulations violate the plaintiff's right to procedural due process of law, guaranteed by the First and Fourteenth Amendments to the United States Constitution and the right to be free from arbitrary and unreasonable suspensions and expulsions.

2. Jurisdiction is based on 28 U. S. C. §§ 1343 and 1344 and 42 U. S. C. § 1983 and arises under the First and Fourteenth Amendments to the United States Constitution. Declaratory relief is authorized by 28 U. S. C. §§ 2201 and 2202 and Rule 57, F. R. C. P.

3. People United to Save Humanity (PUSH) is an Illinois religious corporation organized under the laws of the State of Illinois founded to establish, promote and perpetuate a true ecumenicity within and among God's people on earth; to formulate, structure and implement programs directed toward the religious, moral, ethical, cultural, civic, educational, and economic regeneration, development, and redevelopment of its own members, associates, and the community at large; with emphasis upon the advancement of the constitutional, economic, and civil rights of minority persons; to promote and advance the philosophy and principles of nonviolence and nonviolent direct action as espoused and practices by the late Dr. Martin Luther King, Jr.; to engage in research, citizen education, voter education, and registration; conduct religious and educational conferences and symposiums; publish educational materials; to promote justice, equality, cultural harmony, and cooperation among multi-racial groups throughout the world; to own, buy, sell, lease, and otherwise deal in real estate in pursuit of nonprofit objectives of the organization, and to do all things necessary and proper to carry out the foregoing purposes. PUSH's membership includes parents of students and students in full-time attendance in the Chicago public schools who are thereby subject to the actions and practices complained of here pursuant to the

applicable statutes and rules. PUSH, both with regards to its own membership and other minority group persons, has been active in encouraging their educational development through various programs and has been active in attempting to secure their civil rights and in defending them in the public schools against suspensions, transfers and expulsions under the statutes and rules complained of herein.

4. The named plaintiff Silas Brisco is a 13 year old male residing in the City of Chicago who is presently enrolled at Barton Elementary School in Chicago, Illinois. Catherine Brisco is the mother of Silas Brisco and is serving as next friend and guardian ad litem for purposes of this action. Plaintiffs Catherine and Silas Brisco are PUSH members.

5. Silas Brisco and Catherine Brisco bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, individually and on behalf of all other persons who have been or will be suspended or expelled from full-time public school attendance in the City of Chicago under the statutes and rules complained of herein without (a) adequate notice to them and their parents of the charges against them, (b) a reasonable opportunity to prepare for a hearing on those charges, (c) a hearing and a fair, impartial decision on those charges, and (d) published rules which are lawful and reasonable pursuant to which charges are brought. The class is so numerous that joinder of all members is impractical; there are questions of law and fact common to the class; the claims of the representative parties are typical of the claims of the class; the representative parties will fairly and adequately protect the interests of the class. In addition, the defendants and their agents have acted on grounds generally applicable to the class, thereby making appropriate declaratory and injunctive relief with respect to the class as a whole.

6. Defendants John D. Carey, Cary B. Preston, Gerald Sbarbaro, Alvin Bouttee, Margaret Cerda, Bernard Friedman, Louise Malis, Thomas Nayder, and Margaret Wild are members

of the Board of Education of the City of Chicago and are charged with the responsibility of administration of the public schools within Chicago pursuant to Chapter 122, Section 34-19, Ill. Rev. Stat., and are empowered to oversee the disciplining of pupils.

7. Defendant James F. Redmond is the General Superintendent of Schools of the City of Chicago and as such is the chief administrative officer of the school board of the City of Chicago responsible for the administration of the public schools and the overseeing of the disciplinary process.

8. Rudolph Jezik, Jr., is a principal of Barton School located near 77th and Wolcott in the City of Chicago. Defendant Jezik is responsible for the administration of discipline and the expulsion and suspension of all students in Barton School.

9. Up to and including September 11, 1973, plaintiff Silas Brisco, who was duly enrolled as a full-time regular student in the 6th grade at Barton Elementary School in the Chicago Public School System, wore a small earring in his right ear chosen as a symbol of his pride in being a black person. During that period of time, he was asked on several occasions by defendant Jezik and his agents to remove the earring which plaintiff refused to do.

10. On September 11, 1973, subsequent to arriving at school in the morning, Plaintiff Silas Brisco was called into the school office by Defendant Jezik and Assistant Principal Shark and told to remove the earring or he would be suspended, because the earring was a symbol of membership in a gang.

11. Plaintiff Silas Brisco declined to remove the earring stating that he regarded it as a symbol of black unity. Assistant Principal Shark then asked Mr. Jezik if there was an earring prohibition still in effect and Defendant Jezik said there was; Defendant Jezik further said he would suspend plaintiff Brisco from school if the earring were not removed immediately.

12. Plaintiff Silas Brisco persisted in his refusal to remove the earring and Assistant Principal Shark then left the im-

mediate area apparently for the purpose of telephoning Silas Brisco's mother and for the purpose of writing up the report of suspension.

13. Shortly thereafter Plaintiff Catherine Brisco received a phone call at her from defendants requesting her to appear at the school immediately because of a problem with her son Silas.

14. Plaintiff Catherine Brisco promptly went to the school where she was informed by Defendant Jezik that Silas would be suspended from school if he did not remove the earring from his ear. Plaintiff Catherine Brisco informed Defendant Jezik that she had no objections to her son wearing the earring if he wished because she believed it was a suitable expression of black solidarity.

15. Defendant Jezik thereupon completed a "Report of Suspension" which he delivered to Plaintiff Catherine Brisco which stated, *inter alia*, as follows:

"In accordance with the provisions of rules of the Board of Education, Silas Brisco, a student in this school . . . age 13, grade 6, room 308, teacher Mr. Barber, has been suspended from school this day for a period of twenty days, at the end of the close of the day on 10-9-73 or when a parent comes to school . . . [T]he cause of the suspension is: Silas was requested to remove his earring by the principal. He refused and his mother supported him in this. The fact that he would receive a suspension was explained to the District Superintendent and approved by him last semester. You are invited to discuss the matter of this suspension with me at a mutually convenient time. Sincerely yours, /s/ Rudolph Jezik, Jr. Principal." (Ex. A)

16. At no time prior to Plaintiff Catherine Brisco's arrival at school on September 11, 1973, was Plaintiff Silas Brisco or his mother given (a) adequate notice of the charges against him and informed of the disciplinary sanctions of removal from full-time school attendance that day, (b) reasonable opportunity to prepare for a hearing on those charges, (c) a hearing at

which the burden of proof was on the defendants to show plaintiff Silas Brisco had created a material disruption, (d) an impartial decision on the charges, and (e) notice of a promulgated rule on which the charges were based.

17. Plaintiff's present suspension was preceded by a previous suspension last semester for the same reason also without a hearing. At that time Plaintiffs Silas Brisco was informed he was being suspended from school for wearing a small earring in his right ear because the earring was regarded by defendants as a symbol of gang membership. Immediately after being informed of the suspension of September 11, 1973, Plaintiff Catherine Brisco sought the assistance of Plaintiff PUSH who advised her as to where she could seek legal assistance in this matter.

18. The current suspension was imposed pursuant to Ill. Rev. Stat., Ch. 122 §§ 34-1, 34-8, and 34-19, which provide that "[T]he general superintendent of schools shall prescribe and control, subject to the approval of the board . . . discipline in . . . the schools . . ." Further, the board shall establish rules "for proper maintenance of a uniform system of discipline . . . It may expel, suspend, or otherwise discipline any pupil found guilty of gross disobedience, misconduct, or other violation of the . . . rules. . . ."

19. The suspension was further imposed pursuant to the rule of the Chicago Board of Education which states as follows:

"For gross disobedience or misconduct a pupil may be suspended temporarily by the principal for a period not exceeding one school month for each offense. Suspension shall be reported immediately to the District Superintendent and also to the parent or guardian of the pupil, with a full statement of the reasons for such suspension. The District Superintendent shall have authority to review the action of the principal and to return the suspended pupil." (Ch. VI, Art. 9, Rules and Regulations, Bd. of Educ.)

20. Defendants' action to suspend Plaintiff Silas Brisco from school violates the First and Fourteenth Amendments to the United States Constitution in that he is being and has been threatened with being (a) punished pursuant to a Board of Education rule and State statute which are invalid on their faces and as applied; (b) punished for his opinions and beliefs; (c) punished without reference to promulgated rules and regulations; (d) denied a proper hearing prior to the punishment which includes adequate prior notice of charges, and opportunity to prepare for a hearing, a proceeding in which the burden of proof is on the school board to show a material disruption has occurred; (e) denied a fair and impartial decision; (f) treated differently from other pupils in the school; (g) punished arbitrarily without reasonable basis; and (h) denied access to public education. Such punishment is arbitrary and improper in violation of the First and Fourteenth Amendments to the United States Constitution.

21. The suspension of Plaintiff Silas Brisco interferes with his education in the public schools by preventing him from keeping pace with the instruction given to the rest of his class at school. Plaintiff Brisco's education is threatened with further interference in that plaintiff will again be suspended for failure to remove the earring when he returns to school. The suspension of Plaintiff Silas Brisco, individually and as representative of his class, interferes with the activities and goals of PUSH and its membership by virtue of Plaintiff's membership in PUSH and by virtue of its hampering plaintiff PUSH in its defense of its membership from improper interference with their education and its efforts to further education among its membership and persons belonging to minority groups.

22. Plaintiffs are presently being subjected to a denial of fundamental civil rights for which there is no adequate remedy at law in that they are presently being denied their right to a public education and threatened with a repetition of that denial in the future.

23. Defendants are engaged in a widespread pattern of long-term suspensions and expulsions of Chicago public school students without (a) published rules, (b) notices of charges and an opportunity to prepare for a hearing, (c) a hearing in which the burden of proof is on the defendants to show a material disruption has occurred, and (d) a fair and impartial decision. Such suspensions and expulsions have occurred in the past and will continue to occur in the future. A return of Plaintiff Silas Brisco to classes will not remedy the effects of this pattern which is likely and capable of repetition in the future.

WHEREFORE, Plaintiffs pray that this Court:

1. Declare Ill. Rev. Stat., Ch. 122 § 34-19 and Ch. VI, § 6, Art. 9, of the Rules of the Chicago Board of Education to be unconstitutional and void on their faces and/or as applied;

2. Preliminary and permanently enjoin defendants from suspending or expelling Plaintiff Silas Brisco from attending school without a proper hearing and pursuant to any prohibition against his wearing an earring;

3. Permanently order that all records of the suspensions and other punishment complained of herein be expunged from his school record;

4. Preliminarily and permanently order defendants to provide tutors to enable Plaintiff Silas Brisco to make up work missed as a result of the suspension;

5. Preliminarily and permanently enjoin defendants from punishing individual plaintiffs or members of the class which they represent in any way for the actions complained of herein;

6. Award \$5,000.00 actual and punitive damages; and

7. Award any other relief which is necessary and just under the circumstances.

Count II

1-4. Plaintiffs incorporate by reference paragraphs 1-4 of Count I as paragraphs 1-4 herein.

5. Plaintiffs Silas and Catherine Brisco bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure, individually and on behalf of all other persons in the City of Chicago who are full-time public school students. The class is so numerous that joinder of all members is impractical, there are questions of law and fact common to the class, the representative parties will fairly and adequately protect the interest of the class. In addition, the Defendants and their agents have acted on grounds generally applicable to the class, thereby making appropriate declaratory and injunctive relief with respect to the class as a whole.

5A. Defendant Michael J. Bakalis is the Illinois Superintendent of Public Instruction and as such is the chief administrative officer of the State of Illinois responsible for the administration of the public schools throughout the state. He maintains an office in Chicago, Illinois.

6-17. Plaintiffs incorporate by reference paragraphs 6-17 of Count I as paragraphs 6-17 herein.

18. As full-time public school students in the City of Chicago, Silas Brisco and members of his class are subject to Article 34 of the School Code (Ill. Rev. Stat., Ch. 122, § 34) and to the authority of defendants in connection with discipline in the schools.

19. Students in all Illinois school districts other than that of the City of Chicago are entitled to the procedural protection in Illinois Revised Statutes, Ch. 122, § 10-22.6 prior to their being expelled or suspended from school, which includes notice and hearing prior to long term suspension or expulsion.

20. Plaintiff Silas Brisco and members of his class are under the jurisdiction of defendants herein whose disciplinary

procedures are governed by Ill. Rev. Stat., Ch. 122 §§ 34-8, 34-19. Pursuant to these provisions the defendants have failed to promulgate and Defendant Bakalis has failed to require the promulgation of procedural safeguards comparable to those afforded by Ill. Rev. Stat., Ch. 122, § 10-22.6 in connection with the suspension or expulsion of public school students.

21. Defendants' suspension and expulsion of Silas Brisco and members of his class have not proceeded and will not proceed in the future in accordance with procedures comparable to those provided for in Ill. Rev. Stat., Ch. 122, § 10-22.6.

22. Defendants' failure to promulgate and Defendant Bakalis' failure to require the promulgation of rules and regulations setting forth procedures comparable with those provided for under Illinois Revised Statutes, Chap. 122, § 10-22.6 is violative of Plaintiffs' Constitutional rights in that such omission denies Plaintiffs and the class equal protection of the laws.

23. Plaintiffs have no adequate remedy at law for the omissions complained of herein.

WHEREFORE, plaintiffs pray that this Court:

1. Declare that the policy of the defendants in suspending and expelling students from school for disciplinary reasons without providing the procedural safeguards provided for by Ill. Rev. Stat., Ch. 122, § 10-22.6 is contrary to the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

2. Enter a preliminary and permanent injunction against defendants and their agents enjoining them from suspending or expelling any student for disciplinary reasons, unless said students are given the procedural safeguards outlined in Ill. Rev. Stat., Ch. 122, § 10-22.6.

3. Award Plaintiff Silas Brisco actual and punitive damages in the amount of \$5,000.

4. Grant plaintiffs their costs and such additional relief as this court deems necessary and just.

/s/ DAVID GOLDBERGER

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

• • (Title Omitted in Printing—73-C-2522) • •

ANSWER

Now comes defendants John D. Carey, Carey Preston, Gerald Sbarboro, Alvin Boutte, Maria Cerda, Bernard Friedman, Louise Malis, Thomas Nayder, Margaret Wild, James F. Redmond and Rudolph Jezik, Jr., by their Attorney, Michael J. Murray, and for their Answer to the Second Amended Complaint state as follows:

Count 1

1. Defendants admit the alleged claim is a civil action for declaratory and injunctive relief, but deny that the plaintiffs have been deprived of any right to procedural due process, or any right whatsoever.

2. Defendants deny the allegations of paragraph 2.

3. Defendants neither admit nor deny the allegations of paragraph 3 but demand strict proof thereof insofar as they are relevant to the proceedings.

4. Defendants admit that Silas Brisco is a thirteen year old male residing in the City of Chicago and enrolled at the Barton School. Defendants also admit that Catherine Brisco is the mother of Silas and is serving as next best friend. Defendants further state they have insufficient knowledge upon which to form a belief as to the truth of the further allegations of paragraph 4 and, therefore, deny the same.

5. Defendants deny the allegations of paragraph 5. Further answering, defendants state that plaintiffs' motion for a class action determination was denied on June 13, 1974.

6. Defendants admit that John D. Carey, Carey Preston, Gerald Sbarboro, Maria Cerda, Bernard Friedman, Louise Malis, Thomas Nayder, and Margaret Wild are members of the

Board of Education of the City of Chicago. Defendants deny the remaining allegations of paragraph 6. Further answering, defendants allege that pursuant to Ch. 122, sec. 34-19, Ill. Rev. Stats., the Board of Education of the City of Chicago "shall establish by-laws, rules and regulations, which shall have the force of ordinances, for the proper maintenance of a uniform system of discipline for both employees and pupils . . . It may expel, suspend or otherwise discipline any pupil found guilty of gross disobedience, misconduct or other violation of the by-laws, rules and regulations."

7. Defendants admit the allegations of paragraph 7, but defendants deny that the General Superintendent is personally and directly responsible for "overseeing of the disciplinary process." Further answering, defendants state that Ch. 122, sec. 34-8, Ill. Rev. Stats., provides: "The general superintendent of schools shall prescribe and control, subject to the approval of the board . . . discipline in and conduct of the schools."

8. At all times alleged in the Second Amended Complaint, the former Rudolph Jezik, Jr. now deceased was the principal of the Barton School. Mr. Jezik while in the course of performing his duties as principal was shot and killed at the Barton School on January 17, 1974. Defendants deny the further allegations of paragraph 8. Further answering, defendants state that Ch. 122, sec. 34-19, Ill. Rev. Stats., authorizes the Board of Education of the City of Chicago to "establish by-laws, rules and regulations, which shall have the force of ordinances, for the proper maintenance of a uniform system of discipline for both employees and pupils . . . It may expel, suspend or otherwise discipline any pupil found guilty of gross disobedience, misconduct or other violation of the by-laws, rules, and regulations." Pursuant to this authorization the Board of Education has enacted by-laws 6-8 and 6-9 as follows:

"Sec. 6-8. Exclusions of Pupils—Cause. Whenever a pupil in any school is found by the school authorities to be a distinct detrimental influence to the conduct of the

school, or to be unable to profit or benefit from further experience in his school, he may be transferred to special educational facilities in the school system, or may be excused from further attendance, or excluded from school by the General Superintendent of Schools."

"Sec. 6-9. Suspension of Pupils—Cause. For gross disobedience or misconduct a pupil may be suspended temporarily by the principal for a period not exceeding one school month for each offense. Every such suspension shall be reported immediately to the District Superintendent and also to the parent or guardian of the pupil, with a full statement of the reasons for such suspension. The District Superintendent shall have authority to review the action of the principal and to return the suspended pupil."

9. Defendants admit that Silas Brisco was enrolled in the Barton School and that on many occasions he was asked to remove the earring. Defendants deny the remaining allegations of paragraph 9.

10. Defendants admit the allegations of paragraph 10. Further answering, defendants state that it was explained to plaintiff Silas Brisco that the earring was a symbol of gang membership and as such it created a hazard to him and to other children.

11. Defendants admit the allegations of paragraph 11, except they deny that plaintiff Silas Brisco stated that the earring was a symbol of black unity.

12-13. Defendants admit the allegations of paragraphs 12 and 13.

14. Defendants admit the allegations of paragraph 14. Further answering, defendants state that during the conference held on September 11, 1973, Mrs. Brisco further stated that the earring worn by Silas was a symbol of mutual association of some of the boys in school. Defendants further allege that plaintiff Silas Brisco stated that Anthony Traylor was allowed to wear his earring at all times. Mr. Traylor was called to the office and in response to Mr. Brisco's query about why he wasn't

wearing his earring, Mr. Traylor replied that his guardian wouldn't permit it because she didn't want him to have any trouble at school.

15. Defendants admit the allegations of paragraph 15. Further answering defendants state that plaintiff Silas Brisco's suspension was ordered pursuant to Ch. 122, sec. 34-19, Board Rule 6-9 and Ch. 122, sec. 34-84a as follows:

"Teachers and other certified educational employees shall maintain discipline in the schools. In all matters relating to the discipline in and conduct of the schools and the school children, they stand in the relation of parents and guardians to the pupils. This relationship shall extend to all activities connected with the school program and may be exercised at any time for the safety and supervision of the pupils in the absence of their parents or guardians."

Defendants further allege that plaintiff Brisco's suspension was terminated October 4, 1973.

16. Defendants deny the allegations of paragraph 16. Further answering, defendants state that Silas Brisco and other male students of Barton School were cautioned the day prior to this incident. Further, that Mrs. Brisco had, in the spring of 1973, discussed this problem at great length with defendant Jezik and Mr. Stephen Brown, District 16 Superintendent and as a result of the spring conference, Mrs. Brisco had Silas remove the earring. The Rules of the Board of Education of the City of Chicago afford adequate safeguards for the protection of any and all rights of the plaintiffs. The facts show the pursuant to Ch. 122, sec. 34-19, Ill. Rev. Stats. and Board Rule 6-9, plaintiffs were afforded ample opportunity of notice and hearing and were fully advised of the reasons for the Board's action in accord with the requirements of the Constitution of the United States, the statutes of the State of Illinois and the Rules of the Board of Education of the City of Chicago.

17. Defendants admit that Silas Brisco was suspended in the spring of 1973, but deny that the suspension was a result of

wearing an earring. Further answering, defendants allege that the suspension in the spring of 1973 was a result of a fight at the Barton School in which plaintiff Silas Brisco was a participant. Defendants have insufficient knowledge upon which to form a belief as to the truth of the other allegations of paragraph 17 and, therefore, deny the same.

18-19. Defendants admit the allegations of paragraphs 18 and 19.

20-23. Defendants state that the allegations of paragraphs 20 through 23 are argumentative and conclusory and require no answer, but insofar as the Court may find them factual, defendants deny each and every allegation contained therein.

WHEREFORE, defendants pray that the Court deny the relief prayed for and that defendants may have judgment entered herein for their costs.

Count II

1-5. Defendants repeat and incorporate their answers to paragraphs 1 through 5 of Count I as their answers to paragraphs 1 through 5 of Count II as though fully set forth herein.

6-17. Defendants repeat and incorporate their answers to paragraph 6 through 17 of Count I as their answers to paragraphs 6 through 17 of Count II as though fully set forth herein.

18. Defendants admit the allegations of paragraph 18.

19. Defendants admit the allegations of paragraph 19. Further answering, they state that in the exercise of their legislative discretion of Illinois General Assembly has enacted sec. 34-19 the Illinois School Code which empowers the Board of Education of the City of Chicago to provide by rule for the discipline in the schools. Pursuant to this statutory authority, the Board of Education of the City of Chicago adopted Rule 6-9 as follows:

"Sec. 6-9. Suspension of Pupils—Cause. For gross disobedience or misconduct a pupil may be suspended tem-

porarily by the principal for a period not exceeding one school month for each offense. Every such suspension shall be reported immediately to the District Superintendent and also to the parent or guardian of the pupil, with a full statement of the reasons for such suspension. The District Superintendent shall have authority to review the action of the principal and to return the suspended pupil."

20. Defendants admit that plaintiff Brisco is under the jurisdiction of the defendants. Further answering, defendants state that the General Assembly of the State of Illinois has specifically authorized the Board of Education of the City of Chicago to set forth guidelines for the maintenance of discipline. Further, that the Supreme Court of Illinois has taken judicial notice that "The problems inherent in the supervision and management of a school system in a metropolitan area of 500,000 or more, and particularly, in the City of Chicago, are far more complex and may well require different modes of operation than a system in an average-sized district." *Latham v. Board of Education*, 31 Ill. 2d 178.

21-23. Defendants state that the allegations of paragraphs 21 through 23 are argumentative and conclusory and require no answer, but insofar as the Court may find them factual, defendants deny each and every allegation contained therein.

WHEREFORE, defendants pray that the Court deny the relief prayed for and that defendants may have judgment entered herein for their costs.

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IN THE UNITED STATES DISTRICT COURT
For the Northern District of Illinois
Eastern Division

PUSH, et al.,	} Plaintiffs,	Nos. 73 C 2522 and 74-C-303 Consoli- dated.
vs.		
JOHN D. CAREY, et al.,	} Defendants.	Before the Honorable George N. Leighton, United States District Judge

JARIUS PIPHUS, et al.,	} Plaintiffs,	
vs.		
JOHN D. CAREY, et al.,	} Defendants.	

ORDER

Plaintiffs have moved for an amendment of the final order entered in these cases. The record discloses that after a hearing of these consolidated civil rights actions, they were submitted to the court for final adjudication on a stipulation that included certain depositions, documents, agreed facts and affidavits. In a Memorandum Opinion and Order, the late Judge Richard W. McLaren ruled that defendants had unconstitutionally suspended plaintiffs from school; therefore, their records should be corrected and their reinstatement to class ordered. Judge McLaren, however, concluded that although plaintiffs would technically be entitled to recover damages in a case like this one, no proof of damages was offered; and that the record was completely

devoid of any evidence which could form the basis even of a speculative inference measuring the extent of their injuries. This court's review of Judge McLaren's Memorandum Opinion and Order leads it to conclude that no amendment should be allowed. Accordingly, plaintiffs' joint motion to amend is denied.

So ordered:

/s/ GEORGE N. LEIGHTON
George N. Leighton
United States District Judge

Dated: April 30, 1976